

Appln. No 10/566,167
Reply to Office action of 03/11/2008

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REMARKS / ARGUMENTS

This communication is in response to the Office Action mailed March 11, 2008.

Claims 1, 3-9 and 11-18 remain in the application. Without prejudice, claims 2 and 10 have been withdrawn in view of the examiner's election requirement. Affirmation of the election as mentioned in paragraph 2 of the Detailed Action is hereby made.

Claims 15-18 have been allowed. Claims 1, 5-9 and 12-14 have been rejected. Claims 12 and 14 have been objected to under 37 CFR § 1.75(c). Claims 3, 4, and 11 have been objected to as being dependent from a rejected base claim.

With this response, amendments to Claims 1, 6, 8, 12 and 14 are being submitted. The amendment to claim 6 corrects a minor punctuation error. The amendments to claims 12 and 14 address objections raised under 37 CFR 1.75(c). Claims 12 and 14 no longer depend from another multiple dependent claim. The remaining amendments are discussed below.

Substantive rejections were raised by the Examiner under 35 USC § 102 (anticipation) based upon Shimada (U.S. Pat. No. 5,531,547) and under 35 USC § 103 (obviousness) based upon Shimada in view of Byles (U.S. Pat. No. 6,161,776). For reasons which follow, and in view of the amendments to claims 1 and 8 which are submitted herewith, it is respectfully submitted that these rejections should be withdrawn and that the claims in question should be allowed. As well, it is respectfully submitted that the election of species requirement should be withdrawn.

Rejection of Claim 1 and Claims Dependent Thereon (35 U.S.C. § 102)

Claim 1 has been rejected based upon Shimada (anticipation). However, it will be observed that Shimada's form for stabilizing an earthen embankment cannot be coupled with any like form either above or below the given form except with an added element such as connecting rod 3 as taught by Shimada (see e.g. FIG. 2(a) of Shimada).

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The present invention as defined in claim 1 does not require any such added element. Claim 1 has been amended to emphasize and clarify this point. More particularly, claim 1 now specifies that the coupling means between a given form and like forms above and below the given form comprise:

"... first coupling means for fully coupling [the given] form with a like second coupling means of a first like form extending above the [the given form] ..."

"... second coupling means for fully coupling [the given] form with a like first coupling means of a second like form extending below [the given] form."

(emphasis added)

The foregoing amendment is intended to clarify that the first and second coupling means specified in claim 1 cooperate with each other to fully couple one form (above or below) with the given form (viz. without any added element such as connecting rod 3 as required by Shimada). In the absence of a connecting rod 3, there is disadvantageously nothing to secure or couple Shimada's forms to each other.

Further, with the structure taught by Shimada, it could be quite awkward and labor intensive to align and hold a pair of forms in place while connecting rod 3 was inserted to connect the forms. Thus, the difference between the invention as defined in claim 1 and that of Shimada is not a difference without a distinction. There are structural differences and consequential functional differences which are not without practical advantages served by the present invention as defined in claim 1.

Accordingly, it is respectfully submitted that the rejection of claim 1 should be withdrawn and that the claim should be allowed. Further, it is respectfully submitted that claims depending from claim 1 should likewise be allowed as claims depending from an allowable claim.

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Rejection of Claim 8 and Claims Dependent Thereon (35 U.S.C. § 102)

Claim 8 has been rejected based upon Shimada (anticipation).

As discussed below, Claim 8 has been amended to prescribe "coupling means" similar to the means prescribed in amended Claim 1. For this reason alone, and considering that claim 1 should be considered allowable for the reasons indicated above, it is respectfully submitted that claim 8 should be considered allowable. Claims dependent on claim 8 should be considered allowable as depending from an allowable claim.

Moreover, it should be noted that there is a significant difference between the scope of the invention as defined in claim 1 and the scope invention as defined in claim 8. Basically, claim 1 is directed to a form for stabilizing an earthen embankment. In contrast, claim 8 is directed to a form similar to that prescribed in claim 1 in combination with a geogrid. Shimada does not appear to teach or even suggest the combination of his form with a geogrid.

In fact, it is respectfully submitted that Shimada teaches away from the present invention. Shimada discloses an anchor rod (4) as a tie-back rod which anchors his form to an embankment. This rod is not a geogrid and is not used as a geogrid anchoring rod as the examiner appears to suggest. In FIG. 1 of Shimada, it can be seen that anchor rods (4) extend into an embankment (1) longitudinally away from forms (2) and are tied back to anchor plates (6). No geogrid is shown or contemplated.

It appears that Shimada's anchor rods (4) would interfere with the placement and attachment of any geogrid. Thus, Shimada not only fails to anticipate the invention as defined in claim 8, but also teaches away from the invention a defined in claim 8.

It is possible that the examiner interpreted the reference by Shimada to "a reinforcing grid" in Col. 3, ~line 36, as being a reference to a "geogrid". However the grid to which Shimada is referring is merely the grid formed by vertically and horizontally crossing wires (2c), (2d) in the vertically extending face of form (2) as shown, for

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example, in FIG. 2(a) of Shimada. This is not a "geogrid" which would be understood to extend rearwardly into the backfill behind his form.

Accordingly, it is respectfully submitted that the rejection of claim 8 should be withdrawn and that the claim should be allowed. Further, it is respectfully submitted that claims depending from claim 8 should likewise be allowed as claims depending from an allowable claim.

Election of Species Requirement

In view of the foregoing submissions regarding claims 1 and 8, it is respectfully submitted that withdrawn claims 2 and 10 should be reinstated (37 CFR § 1.142(b)) and that they should be considered allowable because claims 1 and 8 from which claims 2 and 10 depend, respectively, should be considered allowable.

Rejections Based On Shimada In View Of Byles (35 U.S.C. § 103)

The examiner has rejected claims 5 and 12 on the grounds of obviousness. These claims are dependent claims which both specify:

" a plurality of hydroseeding screens formed integrally with said form, each one of said screens being formed within a unique one of said regions bounded by said supporting ribs".

The examiner maintains that Shimada discloses some but not all of the limitations in claims 5 and 12, that Byles substantially teaches the remaining part, that it would be obvious to a skilled person to combine the teachings Shimada and Byles, and that the result would be the invention as specified in claims 5 and 12. It is respectfully submitted that the examiner is in error for several reasons.

- (1) Firstly, for the same reasons that claims 1 and 8 should be considered patentably distinguishable. it is respectfully submitted that claims 5 and 12 should be considered patentably distinguishable.
- (2) Secondly, assuming arguendo that the invention as defined in claims 5 and 12 was identically disclosed by Shimada except for the provision of hydroseeding

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screens (and Shimada clearly contains no such teaching or suggestion), it is not at all clear that the porous "mat" which is described by Byles can in any sense be characterized as a hydroseeding screen. He generally characterizes his mat apparatus as follows:

"... The irrigation mat apparatus or product according to the invention comprises a substantially continuous, porous and permeable mat which is laid beneath the sod, soil and seed, or hydromulch in an area in which turf grass is to be established ..." (see Col. 3, lines 1-5).

In use, he describes the methodology as follows:

"If using sod: Lay sod on mat surface just the same as laying on bare soil.

If using seed: Spread a 1 inch layer of top soil over the mat, then seed as normal.

If using hydromulch: Spread a 1 inch layer of top soil over mat, then hydroseed as usual."

(see Col. 4, lines 16-21).

Byles clearly does not contemplate forming his irrigation mat integrally within defined regions in the face section of a composite form for stabilizing an earthen embankment or in any other form. Indeed, he merely contemplates laying the mat on bare soil or some other surface, then laying sod or top soil on top of the mat, then, in cases where hydromulch is used, hydroseeding the top soil. Byles does not teach or suggest that his irrigation mat might itself serve as a hydroseeding screen, and it is doubtful that it could do so. In fact, the contrary is suggested else it would not be necessary to provide a layer of top soil before hydroseeding.

It is evident that the irrigation mat disclosed by Byles is designed to enable better irrigation for a substantially horizontal turf and not the vertically extending face of an embankment support. The structure of Byles is a relatively complex multi-

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layered structure which includes a water charge inlet to the mat and a water distribution system with channels in the mat. The structure includes upper and lower boundary materials and an intermediate perforated sheet material none of which is called for by the present invention. Such a structure does not constitute a hydroseeding screen.

The purpose of hydroseeding screens is described at page 4, lines 20-25 of the present application:

“... The purpose of hydroseeding screens 26 is to facilitate hydroseeding. More particularly, screens 26 provide a foundation integral with form 15 against which a desired plant growth medium (not shown) can be hydrosprayed from the rear of the form. When seeds contained in the medium subsequently sprout, apertures 31 provide paths through which the resulting plants can grow.” (emphasis added)

In short, the main purpose of hydroseeding screens is to provide a foundation or filter medium to keep SOIL IN and to let WATER OUT and, in contrast to Byles, NOT to introduce more water. The irrigation mat of Byles is not only structured differently from a hydroseeding screen but also has a different function and purpose.

(3) Thirdly, Byles does not teach or suggest how his mat might be integrally formed with a form for stabilizing an earthen embankment as required by claims 5 and 12. He does not contemplate any such form.

(4) Fourthly, assuming arguendo that there was some motivation to combine the teachings of Shimada and Byles, it is respectfully submitted that the result at best would be the mat of Byles somehow supported against the vertically extending face 2(a) of Shimada. It is not only doubtful for reasons indicated above that the mat could serve as a hydroseeding screen; but it is clear that it would not form a plurality of screens, each one being formed “within a unique one of said regions bounded by said supporting ribs”.

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(5) Fifthly, the examiner has maintained that it would have been obvious to one of ordinary skill in the art to apply the hydroseeding screen as taught by Byles to each of the unique regions bounded by the supporting ribs. This assumes not only that the irrigation mat taught by Byles can be characterized as a hydroseeding screen (and it is submitted that it cannot), but also that a skilled person would have some motivation to meticulously instal individual mats into each unique region in the vertically rising face of an embankment support (and it is submitted that no such motivation can exist because Byles contemplates the use of his irrigation mat in a generally horizontal orientation). It is respectfully submitted that no motivation can exist because a skilled person would appreciate not only that that the mat described by Byles is not a hydroseeding screen against which a desired plant growth medium could be hydrosprayed from the rear, but also that the vertically extending face of an embankment support could not be covered with a layer (e.g. a 1 inch layer) of top soil as taught by Byles prior to hydroseeding. Any such top soil would simply slip downwardly and away.

One advantage of individual screens formed within each unique region is clearly described at page 6, lines 11-23 of the present application.

"In FIG. 7, a form 115 originally like form 15 has been modified by breaking away a part of selected ones of the screens 26 in the original form to produce screens 126 with voids 131. A number of the original screens 26 remain intact. Voids 131 can be irregular in size. Their purpose is to facilitate major plantings such as ivy. Typically, the step of producing such voids may be taken in a rudimentary but efficient manner on site after the form has been initially set in position (for example, by a hammer blow or with a cordless drill.)"

Neither Shimada nor Byles contemplate the advantage of individual hydroseeding screens within each unique region in the face of an embankment support, or of easily producing voids in selected ones of such regions. It is

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respectfully submitted that none of the prior art relied upon by the examiner recognizes such advantages.

Accordingly, it is respectfully submitted that the rejection of claims 5 and 12 should be withdrawn and that claims 5 and 12 should be allowed.

Favorable consideration is respectfully solicited. If the Examiner has any questions about the present amendments or anticipates finally rejecting any claim in the present application, then a telephone interview is requested.

Respectfully submitted,



Lance A. Tutlock (Reg. No. 28,362)
Tel: (778) 571-0217; Fax: (604) 608-2910

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Meridian Patent Services
#471-7231-120th Street
Delta, British Columbia
Canada V4C 6P5